

Mohammad H. Gharbi as Plaintiff (Clerk's Dkt. #27); Fatemeh Gharbi's Motion to Approve Adding Plaintiff's Husband, Mohammad H. Gharbi as Plaintiff to the Subject Lawsuit (Clerk's Dkt. #29); and Plaintiffs' Motion to Seek Permanent Injunction and Amend the Original Complaint for Additional Damages (Clerk's Dkt. #40).

In reviewing the motions to dismiss, the Court agreed that Plaintiffs' complaint suffered from the noted deficiencies, but also concluded that "it is not proper for a district court to dismiss a pro se complaint without affording the plaintiff the opportunity to amend." Order of March 5, 2012 (Clerk's Doc. No. 43) at 4 (citing *Ybarra v. Meador*, 427 Fed.Appx. 325, 326 (5th Cir. 2011)). Since Plaintiffs had expressed a desire to amend, the undersigned thus ordered Plaintiffs to file an amended complaint, including all relevant parties and claims, within twenty-one (21) days of the filing of that order (March 5, 2012). *Id.* at 5. The Court also provided the Plaintiffs with some guidance in what they should include in the amended complaint. Finally, the Court admonished the Plaintiffs that their failure to timely file the amended complaint would result in a recommendation that the case be dismissed for failure to comply with a court order.

The deadline for filing Plaintiffs' amended complaint passed on March 26, 2012, and Plaintiffs have yet to submit an amended complaint.¹ A district court has authority to dismiss a case for want of prosecution or failure to comply with a court order. FED. R. CIV. P. 41(b); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). This authority "flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases." *Baldwin v.*

¹On April 3, 2012, the Gharbis filed their Advisory Motion that the Plaintiff Made Several Attempts Verbally and in Writing with Defendants' Legal Representative in Good Faith to Propose a Settlement Offer (Clerks' Doc. No. 52). There is no mention in that filing of an intention to submit an amended complaint, though it does demonstrate that Plaintiffs are clearly capable of filing a pleading with the Court.

Gladstone Ins. Co., 756 F.2d 399, 401 (5th Cir. 1985) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 82 S. Ct. 1386 (1962)). Such a dismissal may be with or without prejudice. *Long v. Simmons*, 77 F.3d 878, 879-80 (5th Cir. 1996). A dismissal with prejudice is appropriate only if the failure to comply with the court order was the result of purposeful delay or contumacious conduct and the imposition of lesser sanctions would be futile. *Id.*; *Berry v. CINA/RSI-CINA*, 975 F.2d 1188, 1191 (5th Cir. 1992).

Plaintiffs have ignored a court order requiring them to provide an amended complaint. Dismissal is clearly appropriate under the circumstances. *See* FED. R. CIV. P. 41(b) (authorizing dismissal of case for failure to comply with a court order).

II. RECOMMENDATION

The Magistrate Court hereby **RECOMMENDS** the District Court dismiss both Plaintiffs' cases, as consolidated, without prejudice pursuant to FED. R. CIV. P. 41(b).

III. WARNING

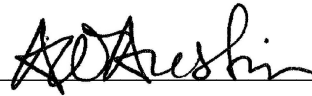
The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections. *See Battles v. United States Parole Common*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from *de novo* review by the District Court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the

District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-53, 106 S. Ct. 466, 472-74 (1985); *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).

To the extent that a Party has not been served by the Clerk with this Report & Recommendation electronically, pursuant to the CM/ECF procedures of this District, the Clerk is ORDERED to mail such Party a copy of this Report and Recommendation by certified mail, return receipt requested.

SIGNED this 11th day of April, 2012.

A handwritten signature in black ink, appearing to read "A. W. Austin", is written over a horizontal line.

ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE